

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

BRANDON L JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:19-09009-MC-RK
	)	
BRIAN KERNS,	)	
	)	
Defendant.	)	

**ORDER COMPELLING COMPLIANCE WITH SUBPOENA**

Before the Court is Plaintiff's Motion to Compel Brian Matthew Kerns to Comply with Plaintiff's Subpoena to Testify at a Deposition in a Civil Action. (Doc. 2.) After careful consideration, the motion is **GRANTED**.

Plaintiff Brandon L. Johnson is the plaintiff in the underlying civil action, which is pending in the United States District Court for the District of Kansas, *Johnson v. Cherokee County, Kansas*, No. 2:17-cv-02644-JAR-GEB (D. Kan.). The motion alleges that Mr. Kerns is a key witness in the underlying case; that he is a former police officer who understands service of process and the importance of complying with a subpoena; that the subpoena was personally served on Mr. Kerns on May 22, 2019; and that he failed to show up for the May 31, 2019 deposition, which was set to take place in Joplin, Missouri, where he lives and works. (Doc. 2 ¶¶ 3-4.) Plaintiff has attached the subpoena and a return of service showing that Mr. Kerns was personally served with the subpoena. (Doc. 2-2; Doc. 2-3.) Plaintiff has also attached a transcript showing that Mr. Kerns failed to appear for the deposition; that counsel for both parties traveled to Joplin from Kansas City to attend the deposition; and that counsel for the defendants in the underlying case do not object to an order compelling compliance in the Kansas City area. (Doc. 2-4.)

The motion states that Plaintiff's counsel has attempted to contact Mr. Kerns at his last known cell phone number but has not been able to reach him. The motion also states that counsel served Mr. Kerns with the motion by U.S. Mail at the same address where he was personally served with the subpoena. Plaintiff seeks an order compelling Mr. Kerns to appear for a deposition in Kansas City, Missouri, or Overland Park, Kansas; an order holding Mr. Kerns in contempt; and an order awarding Plaintiff his costs, fees, and expenses incurred in connection with this motion. After Mr. Kerns failed to respond to the motion within the 14-day deadline to do so, *see* Local

Rule 7, this Court issued an Order to Show Cause to Mr. Kerns at the address where he was personally served stating that failure to respond by July 24, 2019, would result in the Court granting the relief requested by Plaintiff against him. (Doc. 3.) Mr. Kerns has not responded, and the motion is ripe for decision.

“At any time, on notice to the commanded person, the [party who served a subpoena] may move the court for the district where compliance is required for an order compelling production or inspection.” Fed. R. Civ. P. 37(d)(1)(B)(i). The breadth of a subpoena is geographically limited to the area “within 100 miles of where the person resides, is employed, or regularly transacts business in person.” Fed. R. Civ. P. 45(c). However, the Court may, for good cause, enter a protective order “specifying terms, including time and place . . . for the disclosure or discovery.” Fed. R. Civ. P. 26(c)(B); *see also* Committee Notes to the 2013 Amendment to Rule 45 (“[A]n order to comply or be held in contempt may modify the subpoena’s command.”). Furthermore, “[t]he court for the district where compliance is required . . . may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.” Fed. R. Civ. P. 45(g).

The Court finds good cause to order the deposition to occur in the Kansas City area, given that simply ordering compliance with the subpoena would require counsel to travel to Joplin again without any indication that Mr. Kerns will appear. The Court further finds Mr. Kerns in contempt for failing to comply with the subpoena. He has failed to respond to the motion and this Court’s Order to Show Cause and thus has provided no excuse for failing to obey the subpoena. Defendant shall be required to pay the reasonable costs, fees, and expenses incurred by Plaintiff in pursuing this motion.

Accordingly, the Court **ORDERS** as follows:

1. Plaintiff’s motion is **GRANTED**. (Doc. 2.)
2. Defendant Brian Matthew Kerns shall appear for a deposition in either Kansas City, Missouri, or Overland Park, Kansas, at a mutually agreeable time and place to be determined by the parties in the underlying action and Mr. Kerns, if he can be reached.
3. Plaintiff’s counsel shall file and serve a notice of non-party deposition in this Court and in the underlying case specifying the time and place of the deposition.

4. Defendant Brian Matthew Kerns shall pay to Plaintiff the reasonable costs, fees, and expenses incurred by Plaintiff in pursuing this motion. Plaintiff's counsel may file a motion and declaration in this Court detailing the amount of reasonable costs, fees, and expenses within 14 days after Mr. Kerns's deposition.

The Court directs the Clerk's office to mail a copy of this Order to Defendant Mr. Kerns at his last known address:

Brian Matthew Kerns  
834 S. Highland Ave.  
Joplin, Missouri 64801

**IT IS SO ORDERED.**

s/ Roseann A. Ketchmark  
ROSEANN A. KETCHMARK, JUDGE  
UNITED STATES DISTRICT COURT

DATED: July 29, 2019